

Staff Summary Report



To: Mayor & City Council
Through: City Manager

Agenda Item Number 12
Meeting Date 05/1701

SUBJECT: Tempe Municipal Court Public Defender Contracts

PREPARED BY: Louraine C. Arkfeld, Presiding Judge x8614

BRIEF: Request approval to renew public defender contracts for a one year period to continue providing services for indigent defendants in the Tempe Municipal Court.

COMMENTS: **COURT ADMINISTRATION (0501-02)** Request approval to renew public defender contracts for a one year period in a total amount of \$110,000 to continue providing the best possible services for indigent defendants in the Tempe Municipal Court.

Document Name: (20010517ctfv01) Supporting Documents: yes

SUMMARY: For the past seven years, the Court has employed contract Public Defenders. These contracts were originally awarded following an extensive application and review process. Two "full" contracts (one for each of two full-time Criminal Divisions) and a "half" contract (for the Presiding Judge's half-time Criminal Division) have been awarded. The first year the contracts specified 200 cases for the full contract at \$30,000.00 and 100 cases for the half-contract at \$15,000.00. The second year the contracts were expanded to cover 240 and 120 cases respectively, at no increase in cost to the Court.

The third year the number of Public Defender cases increased dramatically. As a result, the Court negotiated new Public Defender contracts that lowered the rate of \$125.00 per case to a new rate of \$100.00 per case. The full contracts were then \$40,000.00 to cover 400 cases and the half contract was \$20,000.00 to cover 200 cases. This rate of \$100.00 per case was one of the lowest per case rates in the Valley, where the average is approximately \$140.00 per case. The contracts covered the anticipated increases and the FY 97/98 and FY 98/99 contracts were at the same rate.

With no increases for three years and in order to remain competitive with other public defender contracts, the full contract amount was increased to \$44,000.00 and the half contract was increased to \$22,000.00 for FY99/00 and FY00/01. This new rate of \$110.00 per case is still one of the lowest per case rates in the

Valley. The contract caseload again reached its maximum this year. While we are able to maintain the contracts at their current rate, we continue to evaluate at what point we will need to raise those rates and to add an additional half-contract.

Our three current contract Public Defenders (two full contracts, one half contract) are being recommended for renewal. All were originally selected by various selection committees with lawyer and citizen representation and have fulfilled expectations. They have covered their courtrooms and dockets very professionally. Evaluations by the judges who work with these defenders is that they have done an excellent job of representing their clients and working to keep the Court operating effectively and efficiently. Each attorney has promptly filed monthly reports as to the cases assigned, the work done on each case, and the status of the case. Few complaints have been received from their clients. All wish to continue with their contracts thereby assuring stable and consistent representation.

FISCAL NOTE: N/A

RECOMMENDATION: It is the Court's recommendation that the Council approve the attached one-year Public Defender's contracts.

AGREEMENT NO.

THIS AGREEMENT is made and entered into by and between the CITY OF TEMPE, a municipal corporation, by and through the Presiding Judge of the City of Tempe, and Robert Butler, an Attorney at Law, hereinafter referred to as "ATTORNEY."

R E C I T A T I O N S

Whereas, the City of Tempe desires to provide competent private counsel for the representation of indigent defendants in the Municipal Court, and Robert Butler is an Attorney at Law licensed to practice in the State of Arizona, therefore,

C O V E N A N T S

It is mutually covenanted and agreed as follows:

1. ATTORNEY shall represent all indigent defendants assigned to him/her by the Court consistent with paragraphs 4 and 18. For the purpose of receiving new case assignments, ATTORNEY may be assigned by the Presiding Judge to a specific courtroom or courtrooms. The Presiding Judge retains the right to reassign ATTORNEY to another courtroom or courtrooms for the purpose of receiving new case assignments at any time upon 30 days written notice. The Presiding Judge retains the right to assign cases to ATTORNEY prior to the initial Pretrial Disposition Conference. Notwithstanding this assignment, the Court retains the right to schedule ATTORNEY'S cases in any courtroom for trial, consistent with his or her court-appearance schedule in the assigned courtroom(s).

2. ATTORNEY shall represent assigned defendants at all court proceedings, including, but not limited to: pretrial disposition conferences; motions; evidentiary hearings; calendar calls; trials; sentencings; sentence reviews; revocation of probation hearings; special hearings; oral arguments; orders to show cause; jail court sessions, and appeals and special actions.

No more than four hundred (400) indigent defendants will be assigned to ATTORNEY during the term of this Agreement. Attorney will be credited with one appointment for each indigent defendant assigned. If ATTORNEY is appointed to represent an indigent defendant who has more than one Municipal Court case pending, ATTORNEY shall be credited with one-half of one appointment for each additional Municipal Court case associated with each indigent defendant.

3. ATTORNEY shall provide personal consultation with clients prior to pretrial disposition conferences whenever possible. ATTORNEY shall use reasonable diligence in maintaining personal contact with each defendant until defendants' cases are terminated and shall use reasonable diligence in notifying defendants of official court action resulting from defendants' nonappearance at scheduled court sessions.

4. ATTORNEY shall conduct the defense of his or her clients in a professional, skilled manner consistent with standards set forth in the Arizona Rules of Professional Conduct and case law defining the duties of defense counsel in criminal cases.

5. ATTORNEY shall give precedence to court settings in the Tempe Municipal Court over civil cases and all other criminal cases in other courts, which do not have precedence as provided by the

Arizona Rules of Criminal Procedure.

6. It is the ATTORNEY's responsibility to notify the Court if any assigned client is not indigent. If ATTORNEY requests a redetermination of the indigence of any defendant ATTORNEY represents and, if the Court makes a determination of nonindigency of such defendant and allows ATTORNEY to withdraw, ATTORNEY agrees he or she will not represent that defendant in that case for a fee.

ATTORNEY acknowledges that it is ATTORNEY'S responsibility to bring such instances of nonindigency promptly to the attention of the Court.

7. ATTORNEY shall keep case logs, final disposition records, time sheets and written statistical reports as required by the Presiding Judge for the purpose of evaluating the performance of ATTORNEY. ATTORNEY shall provide to the Presiding Judge no later than 10 calendar days following the end of each month a monthly statistical report for the previous month in the form set forth in Attachment A, attached hereto. The Presiding Judge shall provide ATTORNEY with the necessary forms. The Presiding Judge reserves the right to revise the information required on the format of the monthly statistical form at any time. (Any such revision shall operate prospectively.) Failure to provide accurate and timely statistics may result in the City withholding payment to ATTORNEY pursuant to paragraph 11 of this agreement. The Court shall prepare a monthly discrepancy report indicating cases submitted and cases credited. ATTORNEY shall have thirty (30) days from the date of the report to request reevaluation of cases credited. After thirty (30) days, if no reevaluation has been requested, the cases will be counted as reported in the discrepancy report.

8. ATTORNEY agrees to provide substitute representation in Court or make suitable arrangements with the Court when ATTORNEY is unable to appear at any Court session for any reason. Substitute counsel shall not be used routinely and in any event no more often than in approximately thirty percent (30%) of all court appearances in cases assigned to ATTORNEY. The name(s) of the responsible substitute attorney shall be on file with the Presiding Judge at all times during the term of this Agreement and such substitute must be approved by the Presiding Judge prior to the representation of indigent defendants in Court. Substitute counsel shall not conduct any jury trial or bench trial unless, pursuant to Rule 6.3, Arizona Rules Criminal Procedure, a motion for substitution of ATTORNEY is granted by the Court.

9. In the event that circumstances arise which may prevent ATTORNEY from providing effective assistance of counsel, or from otherwise accepting indigent appointments, the parties agree that the Presiding Judge and ATTORNEY shall confer and make reasonable efforts to reach agreement on a temporary modification of this Agreement.

10. The term of this Agreement shall begin July 1, 2001 and continue until June 30, 2002.

11. From July 1, 2001, to June 30, 2002, the City of Tempe will pay ATTORNEY, for all representation and work required pursuant to this Agreement, the amount of \$44,000.00 (forty-four thousand dollars) annually. ATTORNEY shall submit a monthly invoice for payment to the Presiding Judge no later than the tenth day of the calendar month for which ATTORNEY is billing. Payment shall be made by the City within 30 days after receipt of the

invoice by the Presiding Judge, except that payment may be withheld by the City pending ATTORNEY'S submission of the monthly statistical report required under paragraph 7 of this Agreement. Any additional cases assigned above the agreed upon four hundred (400) shall be compensated for at the rate of one hundred twenty five dollars (\$125) per case.

12. ATTORNEY shall maintain an office or make arrangements to use an office that is located in Maricopa County and which is capable of receiving clients and telephone calls and taking messages during regular business hours.

13. ATTORNEY shall be responsible for normal and incidental costs incurred in the representation of indigent defendants assigned by the Court pursuant to this Agreement, including but not limited to: office space, telephones, transportation, parking, office supplies, office overhead, secretarial services, photocopies, printing and binding.

Upon approval of the Judge presiding over the individual cases in question, the City shall pay all reasonable costs incurred in analyzing indigent defendants' second breath samples and in employing an expert to testify as to the results of this analysis, in employing other experts determined to be necessary by the Judge, for the costs of providing an interpreter to conduct client or witness interviews and for photocopy costs incurred in obtaining discoverable materials in possession of the Tempe Prosecutor's Office. The City may reimburse ATTORNEY for additional reasonable costs upon prior approval of the Presiding Judge.

Upon prior approval of the Presiding Judge, ATTORNEY shall be provided additional compensation at a rate not to exceed forty dollars (\$40) per hour for cases involving defendants who, because of their mental condition, cause unusual problems or excessive additional work for ATTORNEY or for cases, which because of the complexity of facts, legal issues or proceedings, creates excessive additional work for ATTORNEY. The filing of an appeal or a complaint for Special Action shall not, by itself, support a decision to approve additional compensation.

14. The Presiding Judge may terminate this Agreement without cause with not less than thirty (30) days written notice to ATTORNEY by the Presiding Judge.

ATTORNEY may terminate this Agreement with not less than thirty (30) days written notice to the Presiding Judge.

In the event ATTORNEY is not providing representation consistent with the behavior set forth in paragraphs 4 and 18, or if the Presiding Judge determines that an emergency exists, the Presiding Judge may immediately suspend the ATTORNEY from further representation of contract defendants. The matter shall be referred to a Public Defender Review Committee for further investigation and action. The Public Defender Review Committee shall take action within a reasonable amount of time.

ATTORNEY must at all times remain an active member in good standing of the State Bar of Arizona. ATTORNEY must immediately inform the Presiding Judge of any changes in ATTORNEY'S membership status. Failure to maintain membership status and/or failure to promptly apprise the Presiding Judge of changes in status may result in immediate termination of this agreement.

15. If less than a full calendar month is included within the contract term, at either the beginning of the contract term or at the end, the monthly compensation, as indicated in paragraph 10 of this agreement, will be prorated for that month at \$208.34 per scheduled work day. At the end of the contract term, the Court may require ATTORNEY to continue to represent any indigent defendants to whom he or she has already been appointed and who have cases pending adjudication. If so required by the Court, ATTORNEY shall be compensated by the City at the rate of \$40 per hour for all necessary preparation for and appearances at all Court proceedings beyond the contract term.

16. ATTORNEY will not be required to pay for interpreter services for non-English speaking defendants for any in-court proceedings or for interviews conducted at the Court consistent with paragraph 13 of this agreement.

17. In the event a case involves two or more defendants, the Court may assign a case to ATTORNEY even though the case was originally assigned to other counsel, when such assignment is necessary to avoid a conflict of interest.

18. The parties contemplate that some of the services required to be provided by the terms of this Agreement shall be performed by lawyers duly licensed to practice law in the State of Arizona, who are acting as the agents or employees of ATTORNEY. No such lawyer shall be employed in the performance of this Agreement without the prior approval of the Presiding Judge. Approval of the employment of such lawyers shall not be arbitrarily or unreasonably withheld or withdrawn. No such lawyer shall be employed by ATTORNEY in a manner inconsistent with paragraph 8 of this

Agreement.

19. This Agreement shall be interpreted to avoid questions of unethical conduct by ATTORNEY or Court. The parties shall conform to the Rules of Professional Conduct and Code of Judicial Conduct, as adopted in the State of Arizona.

20. Liability; Indemnity. Attorney covenants and agrees that City is to be free from liability and claim for damages by reason of any harm or injury to any person or persons, including Attorney, or property of any kind whatsoever and to whomsoever during the term of this Agreement or any extension hereof, Attorney hereby covenanting and agreeing to indemnify and save harmless City from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, except to the extent caused by the sole and gross negligence or willful misconduct of City, its agents, employees, or invitees. City agrees that Attorney shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of City, as Attorney may deem necessary, provided that the expenses thereof shall be paid by Attorney. The provisions of this Section shall survive the expiration or other termination of this Agreement.

21. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, or relationship, partnership or formal business organization of any kind, and the rights, obligations, and relationship of the parties shall be that of agency independent contractor. The parties agree that neither the ATTORNEY nor any

person supplied by the ATTORNEY in the performance of its obligations under this agreement are City employees, and that no rights of City civil service; retirement or personnel rules accrue to such persons. The ATTORNEY shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons; and shall save and hold the City harmless with respect thereto.

22. The parties acknowledge that this Agreement is subject to cancellation by the City of Tempe pursuant to the provisions of A.R.S. 38-511.

23. ATTORNEY understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA) and agrees to comply with the IRCA in performing this Agreement and to permit City to verify such compliance.

24. ATTORNEY shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. ATTORNEY will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to, the following: Employment upgrading, promotion, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Attorney shall comply with all

laws applicable to City services provided herein, including, but not limited to, Title II of the Americans with Disabilities Act.

25. ATTORNEY understands and acknowledges that this Agreement is for only the time period described and that no promises or assurances for an Agreement to provide representation to indigent defendants in Municipal Court beyond that time period have been made or inferred to the ATTORNEY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 17th day of May, 2001.

Approved as to form: City of Tempe, a municipal corporation

City Attorney


Louraine C. Arkfeld
Presiding Judge

Mayor


Attorney at Law

Attest:

City Clerk

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Approved as to form: City of Tempe, a municipal corporation

City Attorney


Louraine C. Arkfeld
Presiding Judge

Mayor



Attorney at Law

Attest:

City Clerk

AGREEMENT NO.

THIS AGREEMENT is made and entered into by and between the CITY OF TEMPE, a municipal corporation, by and through the Presiding Judge of the City of Tempe, and Tamara Brooks-Primera, an Attorney at Law, hereinafter referred to as "ATTORNEY."

R E C I T A T I O N S

Whereas, the City of Tempe desires to provide competent private counsel for the representation of indigent defendants in the Municipal Court, and Tamara Brooks-Primera is an Attorney at Law licensed to practice in the State of Arizona, therefore,

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8. ATTORNEY agrees to provide substitute representation in Court or make suitable arrangements with the Court when ATTORNEY is unable to appear at any Court session for any reason. Substitute counsel shall not be used routinely and in any event no more often than in approximately thirty percent (30%) of all court appearances in cases assigned to ATTORNEY. The name(s) of the responsible substitute attorney shall be on file with the Presiding Judge at all times during the term of this Agreement and such substitute must be approved by the Presiding Judge prior to the representation of indigent defendants in Court. Substitute counsel shall not conduct any jury trial or bench trial unless, pursuant to Rule 6.3, Arizona Rules Criminal Procedure, a motion for substitution of ATTORNEY is granted by the Court.

9. In the event that circumstances arise which may prevent ATTORNEY from providing effective assistance of counsel, or from otherwise accepting indigent appointments, the parties agree that the Presiding Judge and ATTORNEY shall confer and make reasonable efforts to reach agreement on a temporary modification of this Agreement.

10. The term of this Agreement shall begin July 1, 2001 and continue until June 30, 2002.

11. From July 1, 2001, to June 30, 2002, the City of Tempe will pay ATTORNEY, for all representation and work required pursuant to this Agreement, the amount of \$22,000.00 (twenty-two thousand dollars) annually. ATTORNEY shall submit a monthly invoice for payment to the Presiding Judge no later than the tenth day of the calendar month for which ATTORNEY is billing. Payment shall be made by the City within 30 days after receipt of the

invoice by the Presiding Judge, except that payment may be withheld by the City pending ATTORNEY'S submission of the monthly statistical report required under paragraph 7 of this Agreement. Any additional cases assigned above the agreed upon two hundred (200) shall be compensated for at the rate of one hundred twenty five dollars (\$125) per case.

12. ATTORNEY shall maintain an office or make arrangements to use an office that is located in Maricopa County and which is capable of receiving clients and telephone calls and taking messages during regular business hours.

13. ATTORNEY shall be responsible for normal and incidental costs incurred in the representation of indigent defendants assigned by the Court pursuant to this Agreement, including but not limited to: office space, telephones, transportation, parking, office supplies, office overhead, secretarial services, photocopies, printing and binding.

Upon approval of the Judge presiding over the individual cases in question, the City shall pay all reasonable costs incurred in analyzing indigent defendants' second breath samples and in employing an expert to testify as to the results of this analysis, in employing other experts determined to be necessary by the Judge, for the costs of providing an interpreter to conduct client or witness interviews and for photocopy costs incurred in obtaining discoverable materials in possession of the Tempe Prosecutor's Office. The City may reimburse ATTORNEY for additional reasonable costs upon prior approval of the Presiding Judge.

Upon prior approval of the Presiding Judge, ATTORNEY shall be provided additional compensation at a rate not to exceed forty dollars (\$40) per hour for cases involving defendants who, because of their mental condition, cause unusual problems or excessive additional work for ATTORNEY or for cases, which because of the complexity of facts, legal issues or proceedings, creates excessive additional work for ATTORNEY. The filing of an appeal or a complaint for Special Action shall not, by itself, support a decision to approve additional compensation.

14. The Presiding Judge may terminate this Agreement without cause with not less than thirty (30) days written notice to ATTORNEY by the Presiding Judge.

ATTORNEY may terminate this Agreement with not less than thirty (30) days written notice to the Presiding Judge.

In the event ATTORNEY is not providing representation consistent with the behavior set forth in paragraphs 4 and 18, or if the Presiding Judge determines that an emergency exists, the Presiding Judge may immediately suspend the ATTORNEY from further representation of contract defendants. The matter shall be referred to a Public Defender Review Committee for further investigation and action. The Public Defender Review Committee shall take action within a reasonable amount of time.

ATTORNEY must at all times remain an active member in good standing of the State Bar of Arizona. ATTORNEY must immediately inform the Presiding Judge of any changes in ATTORNEY'S membership status. Failure to maintain membership status and/or failure to promptly apprise the Presiding Judge of changes in status may result in immediate termination of this agreement.

15. If less than a full calendar month is included within the contract term, at either the beginning of the contract term or at the end, the monthly compensation, as indicated in paragraph 10 of this agreement, will be prorated for that month at \$208.34 per scheduled work day. At the end of the contract term, the Court may require ATTORNEY to continue to represent any indigent defendants to whom he or she has already been appointed and who have cases pending adjudication. If so required by the Court, ATTORNEY shall be compensated by the City at the rate of \$40 per hour for all necessary preparation for and appearances at all Court proceedings beyond the contract term.

16. ATTORNEY will not be required to pay for interpreter services for non-English speaking defendants for any in-court proceedings or for interviews conducted at the Court consistent with paragraph 13 of this agreement.

17. In the event a case involves two or more defendants, the Court may assign a case to ATTORNEY even though the case was originally assigned to other counsel, when such assignment is necessary to avoid a conflict of interest.

18. The parties contemplate that some of the services required to be provided by the terms of this Agreement shall be performed by lawyers duly licensed to practice law in the State of Arizona, who are acting as the agents or employees of ATTORNEY. No such lawyer shall be employed in the performance of this Agreement without the prior approval of the Presiding Judge. Approval of the employment of such lawyers shall not be arbitrarily or unreasonably withheld or withdrawn. No such lawyer shall be employed by ATTORNEY in a manner inconsistent with paragraph 8 of this

Agreement.

19. This Agreement shall be interpreted to avoid questions of unethical conduct by ATTORNEY or Court. The parties shall conform to the Rules of Professional Conduct and Code of Judicial Conduct, as adopted in the State of Arizona.

20. Liability; Indemnity. Attorney covenants and agrees that City is to be free from liability and claim for damages by reason of any harm or injury to any person or persons, including Attorney, or property of any kind whatsoever and to whomsoever during the term of this Agreement or any extension hereof, Attorney hereby covenanting and agreeing to indemnify and save harmless City from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, except to the extent caused by the sole and gross negligence or willful misconduct of City, its agents, employees, or invitees. City agrees that Attorney shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of City, as Attorney may deem necessary, provided that the expenses thereof shall be paid by Attorney. The provisions of this Section shall survive the expiration or other termination of this Agreement.

21. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, or relationship, partnership or formal business organization of any kind, and the rights, obligations, and relationship of the parties shall be that of agency independent contractor. The parties agree that neither the ATTORNEY nor any

person supplied by the ATTORNEY in the performance of its obligations under this agreement are City employees, and that no rights of City civil service; retirement or personnel rules accrue to such persons. The ATTORNEY shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons; and shall save and hold the City harmless with respect thereto.

22. The parties acknowledge that this Agreement is subject to cancellation by the City of Tempe pursuant to the provisions of A.R.S. 38-511.

23. ATTORNEY understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA) and agrees to comply with the IRCA in performing this Agreement and to permit City to verify such compliance.

24. ATTORNEY shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. ATTORNEY will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to, the following: Employment upgrading, promotion, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Attorney shall comply with all

laws applicable to City services provided herein, including, but not limited to, Title II of the Americans with Disabilities Act.

25. ATTORNEY understands and acknowledges that this Agreement is for only the time period described and that no promises or assurances for an Agreement to provide representation to indigent defendants in Municipal Court beyond that time period have been made or inferred to the ATTORNEY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 17th day of May, 2001.

Approved as to form: City of Tempe, a municipal corporation

City Attorney



Louraine C. Arkfeld
Presiding Judge

Mayor



Attorney at Law

Attest:

City Clerk